

### **REMARKS**

Claims 1-10 are presently pending in the application.

Applicants have amended claim 1 in order to correct a typographical error. As such, no new matter has been added by this amendment, and entry of the amendment is respectfully requested.

### **Claim Rejection Under 35 U.S.C. §103(a)**

The Examiner has rejected claims 1-9 under 35 U.S.C. §103(a) as being unpatentable (obvious) over JP 11 000391 of Etsuro in view of U.S. Patent No. 5,591,409 of Watkins. The Examiner asserts that Etsuro teaches a method and apparatus for preventing paralysis of the sense of smell wherein fragrances are supplied continuously with intermittent bursts of fragrance at a higher intensity. The Examiner acknowledges that Etsuro is silent as to a second fragrance source, but asserts that Watkins teaches the presentation of fragrances in controlled applications with several different fragrance sources within the same apparatus in controlled, timed actuation and application thereof. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to utilize plural fragrance sources in Etsuro for a secondary source with intermittent delivery because it would further minimize the occurrence of habituation of the sense of smell.

Particularly, with respect to claims 2-3, the Examiner argues that Watkins teaches timed, controlled electronic activation with user discretion for interval settings, and that Etsuro also teaches timed interval activation. Thus, the Examiner argues, it would have been well within the purview of one of ordinary skill in the art to determine optimal interval segments.

With respect to claims 4-9, the Examiner argues that Etsuro teaches a liquid supply within a container having a wick therewith and a heating means at the wick level.

Applicants respectfully, but strenuously, traverse the Examiner's §103(a) rejection of claims 1-9 and the arguments in support thereof for the reasons that follow.

The claimed invention is directed to a method for preventing the habituation of a fragrance composition which comprises providing to a space to which it is desired to fragrance, a continuous supply of a first fragrance composition and a periodic supply of a second fragrance composition. Despite the Examiner's assertion, neither Etsuro nor Watkins teaches, alone or in

combination, a continuous supply of a fragrance composition and, therefore, the references do not teach or suggest all of the elements of the claimed invention.

Etsuro, a computer assisted translation of which is submitted herewith, is directed to an aroma machine which utilizes a positive-temperature-coefficient-thermister heating element 1 to intermittently heat and vaporize an aromatic (see Etsuro, claim 1 and ¶¶ [0001] and [0005]). In other words, when power is turned off to the heating element 1, the element 1 no longer vaporizes the aromatic (see, e.g., ¶ [0018]). Thus, the machine of Etsuro prevents paralyzing a human being's sense of smell, thereby maintaining the perceived strength of the aroma, by intermittently, as opposed to continuously, vaporizing a single aromatic (see ¶ [0023]). Therefore, contrary to the Examiner's assertion, in addition to not teaching a second fragrance, Etsuro also does not teach or suggest a continuous supply of a fragrance.

Watkins fails to make up for the deficiencies of Etsuro as Watkins also does not teach or suggest a continuous supply of a fragrance. Watkins teaches an apparatus for providing aromas to a predetermined region or chamber, and methods for introducing precisely controlled amounts of the aromas using sophisticated metering technology (see Watkins, e.g., Abstract, claim 1 and Fig. 4). A spraying means delivers a controlled quantity of aromatic vapor into a chamber through which air is continually moving (col. 2, lines 13-15). A fan or blower mechanism brings air in, and pushes the aroma laden air out (col. 2, lines 15-17). On discontinuance of the spray, the continually moving air removes the aromatic vapors from the chamber, clearing it for the next generation of scent (col. 2, lines 18-20).

This disclosure makes clear that Watkins is directed to an apparatus and methods which enable a person to smell different aromas at different times without the aromas becoming mixed (see also, claims 1 and 10). This is accomplished, in part, by providing unscented air which cleans the user's olfactory sensors in anticipation of the introduction of a next aroma (col. 2, lines 20-23). Thus, Watkins clearly teaches that the introduction of an aroma must be discontinued (non-continuous) and the aromatic vapors removed from a region or chamber, otherwise a person's olfactory sensors would not be cleared. Also, since each aroma is removed from, e.g., a chamber, and this is done after only a short period of time, it follows that Watkins is not concerned with the problems associated with sensory habituation. Therefore, Watkins

teaches directly away from using a continuous fragrance and a periodic supply of a second fragrance for preventing habituation as in the claimed invention.

Notwithstanding, even if *prima facie* obviousness could be shown based on the above-noted combination of references, which Applicants assert it cannot, such *prima facie* obviousness is sufficiently overcome by Applicants' improved and unexpected results. Applicants have shown by experimental testing an effective method and device for preventing the habituation of a fragrance by continuously providing a core fragrance (*e.g.*, ginger flowers) and periodically providing another fragrance (*e.g.*, pomme) (see Example 1, ¶ [0034]). More specifically, this testing unexpectedly resulted in a perception by a panel of 13 testers that the core fragrance provided a constant aroma; that is, the testers' sense of smell continued to appreciate the full strength of the core fragrance over time and did not result in habituation of the core fragrance (see Example 1, ¶ [0035]).

In another test, Applicants conducted a similar experiment as that described above, but this time determined the perceived strength of the aroma from the core fragrance (ginger flowers) alone and compared this result with the results obtained when a second fragrance (pomme) was periodically introduced for two different time intervals (see Example 2, ¶ [0036]). This test unexpectedly showed that the introduction of the second fragrance results in a higher perceived aroma strength of the core fragrance and that, when the second fragrance is introduced for a relatively long time period, the perceived aroma strength of the core fragrance improves or is greater compared to when the second fragrance is introduced for a relatively short period of time (see Example 2, ¶ [0036]).

Applicants were also able to confirm that periodically providing a single fragrance (freesia and magnolia), instead of continuously providing the fragrance, results in a aroma strength which is perceived to be constant; that is, pulsing the fragrance was found to prevent habituation of the sense of smell of the fragrance (see Example 3, ¶ [0037]). However, in doing so, Applicants unexpectedly found that periodically providing a fragrance would not only provide an anti-habituation effect of that fragrance, but would also provide an anti-habituation effect of a continuously supplied fragrance as described in the present invention.

In order to establish *prima facie* obviousness, the Examiner must show the following three essential criteria to support the rejection: (1) that the references teach or suggest

all elements of the claims; (2) that the cited references provide motivation to modify and combine the references as suggested by the Examiner; and (3) that the references provide a basis for a reasonable expectation of success from such motivation and/or combination. “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight.” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). It is improper to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988). Therefore, the suggestion to modify and/or combine and the reasonable expectation of success must come from the references without reference to Applicants’ specification. *See, e.g., In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998).

Finally, Applicants respectfully, but strenuously, assert that it was improper for the Examiner to conclude that it would have been obvious to one of ordinary skill in the art to utilize plural fragrance sources in Etsuro for a secondary source with intermittent delivery “because it would further minimize the occurrence of habituation of the sense of smell,” as there is no evidence of such a teaching, suggestion or motivation in the cited prior art. In other words, the Examiner has improperly asserted a hindsight reconstruction of the prior art by taking Applicants’ disclosure as a blueprint for piecing together the prior art to defeat patentability. *See In re Dembiczak, supra; see also, In re Fine, supra.*

For all the reasons set-forth above, reconsideration and withdrawal of the §103(a) rejection of claims 1-9 are respectfully requested.

#### **Claim Rejection Under 35 U.S.C. §102(b)**

The Examiner has rejected claim 10 under 35 U.S.C. §102(b) as being anticipated by Watkins. The Examiner argues that Watkins teaches two fragrance compositions and a means capable of supplying one continuously and another intermittently.

This rejection and the argument in support thereof are respectfully, but strenuously, traversed for the reasons presented above as well as for the reasons set forth below.

Claim 10 is directed to a device for preventing the habituation of a fragrance composition wherein the device is adapted to supply at least two fragrance compositions to a

space and wherein the device comprises a first supply source for periodically supplying a first fragrance composition to the space and a second supply source for continuously supplying a second fragrance composition to the space.

In contrast, Watkins discloses an apparatus for providing an aroma to a predetermined region from time to time which comprises a means for containing an aroma-producing material and confining the material therein except when actuated to release some of the material therefrom (see claim 1). Watkins also discloses an apparatus which provides an aroma material to a predetermined region from time to time and which comprises a plurality of the apparatuses recited in claim 1 of Watkins (see claim 10). As such, it is recognized that an argument can be made that Watkins teaches an apparatus having more than one supply source, albeit that the apparatus is actually a combination of two or more of the apparatuses of Watkins. However, since each apparatus in such a combination provides an aroma to a region from time to time, Watkins does not teach or suggest an important feature of the claimed invention; namely a second supply source that continuously supplies a second fragrance composition to a space (compare claims 1 and 10 of Watkins to claim 10 of the present invention). Accordingly, Watkins does not anticipate the present invention as recited in claim 10. For all the reasons set forth above, reconsideration and withdrawal of the § 102(a) rejection of claim 10 is respectfully requested.

Further, it is not practical to use or adapt the apparatus of Watkins to supply a fragrance continuously. The aroma containers 5 of Watkins are very small and necessarily only provide precise increments or bursts of aroma; otherwise the aroma carrying chemicals 6 would be depleted very quickly (see col. 2, line 66 to col. 3, line 2 and Figs. 3 and 5). Besides, using or adapting the apparatus of Watkins to supply a continuous fragrance would go directly against the teaching of Watkins that sprays must be discontinued and unscented air supplied to the user in order to clear the olfactory sensors before introduction of the next aroma. Accordingly, Watkins fails to teach or suggest important features of the presently claimed invention, including continuously supplying a fragrance while preventing the habituation of the fragrance. Therefore, the rejection based on Watkins is improper and should not be applied to claim 10.

In view of the forgoing remarks, Applicants submit that pending claims 1-10 are patentably distinct from the prior art. Accordingly, reconsideration and withdraw of the Examiner's rejections, and an early Notice of Allowance, are respectfully requested.

Respectfully submitted,

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